

***"LADY JUSTICE AND THE CORPORATE VISOR"***

**AN APPLICATION OF ROUTINE ACTIVITY THEORY AS A SYNTHESIZED  
THEORETICAL FRAMEWORK FOR EXPLAINING CORPORATE CRIME**

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# **“Lady Justice and the Corporate Visor:” An Application of Routine Activity Theory as a Synthesized Theoretical Framework for Explaining Corporate Crime**

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## *Abstract*

*The routine activity theory approach to the etiology of “street crimes” has received considerable empirical support as a viable, synthesized explanatory framework for understanding the universal social problems of violent and property crimes. However, the criminological community has all but ignored this useful theoretical tool as an apropos explanatory framework for our most insidious and prolific crime problem: corporate crime. This article highlights the deplorable lack of criminological attention to the problem of corporate crime, details the development of legally defined “corporate actors” in American society, and explains how routine activity theory synthesizes previous theoretical efforts in a manner capable of explaining the existence and proliferation of corporate crime. The present discussion accomplishes this last objective by reworking and reapplying the three major elements of routine activity theory (motivated offenders, suitable targets, and lack of capable guardians) to the phenomenon of corporate crime. Lastly, this article proposes an empirical research design focusing on contract overpricing in United States Air Force procurement contracts as a starting point for establishing the empirical utility of this theoretical perspective to the problem of corporate crime against the most suitable target of all, the federal government.*

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## Introduction

“The problem I thus pose is not what shall succeed mankind in the sequence of living beings, but what type of man shall be bred, shall be willed for being higher in value” (Nietzsche as cited in Kaufmann, 1956, p. 271). This quote from Friedrich Nietzsche expresses the philosopher’s belief in the eventual evolution of a super race of human beings he called the “ubermensch,” or “overmen.” In the ninety-nine years since Nietzsche’s death however, something the philosopher never could have foreseen has emerged as the modern fulfillment of his admonitions. In our zeal to modernize and industrialize American society in this century, we have both bred and willed into being a “race” of entities that have more power and longevity than any individual could dream for. The entities encompassing this relatively new, more powerful and longer living race are entitled “corporations.” They are codified in our legal system and anthropomorphized in our society where they have the ability to take actions like any individual human being but on a scale no one individual can realize. Like Nietzsche, our nation’s forefathers also did not anticipate the emergence of these oligarchic corporations and made no provisions in our Constitution for these behemoths to be included in the justice preserving balance of powers paradigm imbued in our system of government. “As a result, while the United States Constitution today governs every federal, state, county, and local authority, no matter how small, it is effectively silent about the giant corporations which rule our economy” (Nader, Green & Seligman, 1976, p. 16). In short, in our modern society humans are no longer the only entity capable of action. Indeed, society is now comprised of two types of actors: individual human actors or “natural

persons,” and anthropomorphized corporations or “corporate actors” with the latter of the two now more dominant in terms of both size and power (J. S. Coleman, 1982).

This present reality resulted from a fundamental change in the structure and form of American society as the numbers of corporations grew while legal developments led to the conception of a corporation as a legal person distinct from individuals and able to act and be acted upon (J. S. Coleman, 1982). The universal and immediate acceptance of this reality is perhaps more important to the field of criminology than any of the other disciplines devoted to the study of society. No longer should criminologists debate over whether or not corporations are indeed major societal actors or mere legal fictions incapable of societal action and impact. For coexistent with the ability to act and be acted upon like natural persons, is the reality that corporations also developed the ability, and many criminologists would argue the habitual affinity, to engage in actions deemed delinquent by society. In other words, corporate actors and natural persons share the ability, motivation, and propensity to choose delinquent versus non-delinquent courses of action. Thus, this evolution of corporations from organizations dependent on natural persons to stand alone legal entities that have the ability to act and be acted upon allows for the application of criminological theories to explain and hopefully provide avenues to curb corporate crime. Unfortunately, the field of criminology’s efforts to include deviant actions by corporate actors or simply “corporate crime” as worthy of theoretical and empirical study is relatively infantile. Moreover, the vast majority of criminological focus and effort remains doggedly focused on the explanation of “street crimes” committed by natural persons. Considering corporate actors’ ability to take actions on a scale larger than any individual could realize, it is easy to see how delinquent actions by

corporate actors have the potential for more serious societal impact. As Coleman (1992) points out, what efforts have been made to explain corporate criminality can be categorized in three general areas: (1) micro oriented, social psychological explanations dealing with the way individuals learn criminality via association with others, (2) macro oriented explanations focusing on the structure of western society and capitalism as promoting causal criminogenic values, and (3) the newest focus of the three utilizing organizational theory as the basis for explaining corporate deviance as a byproduct of the external and internal socialization processes within corporations. These three theoretical paradigms do provide some sporadic insight into certain aspects of corporate crime, but are individually incapable of explaining the gamut and proliferation of corporate crime in modern society. To this end, the three central elements of routine activity theory, motivated offenders, suitable targets, and the absence of capable guardians, represents a heretofore ignored synthesis and improvement of previous theoretical attempts at explaining corporate crime (Cohen & Felson, 1979).

### **The Evolution of The "Overmen"**

Prior to a discussion of the evolution of criminological theory to explain corporate deviance and a presentation of routine activity theory as a useful synthesized theoretical framework, it is essential to first have a firm understanding of the historical development of corporate actors. Specifically, an examination of the "evolution" of corporate actors is needed to understand how they developed the ability and propensity to engage in delinquent behavior in the same way as natural persons with much greater potential for serious societal ramifications. To this end, Coleman's influential work, The Asymmetric

Society, provides the most descriptive account of how the evolution of corporate actors came to pass (J. S. Coleman, 1982). Specifically, Coleman credits changes in our English based legal system from the 13<sup>th</sup> century to modern times with both legally creating the modern concept of corporate actors and providing them with an arena in which to wield power.

Prior to 13<sup>th</sup> century English law, the court system of England did not have to take into consideration any type of legal interaction other than those between natural persons. In the 13<sup>th</sup> century, however, the practice of issuing charters to towns in England marked a watershed for England's, and later America's, legal system. In this regard, chartered towns began to collect tolls, own land, have a treasury, and enter into contracts. Coleman points out that, "this meant that towns became parties before the court, as plaintiffs or as defendants, but if this were to be possible, the court had to find a new conception: an actor who could not be identified with any natural person but was somehow distinct, having its own rights and resources and its own interests" (J. S. Coleman, 1982, p. 7). It was in these now ancient courts' struggle with this issue that the concept of a "fictional person" or "legal person" first arose. More important was the codification of the concept of limited liability in English law. Here, the courts made it possible and enticing for individuals to incorporate knowing that only their initial investments were at stake and not the whole of their financial resources. It was this latter act of the thirteenth century English courts that gave rise to the massive early corporations of England, such as the Dutch East Indies Corporation. Eventually the coming of the industrial revolution in both England and the United States would serve to



increase exponentially the numbers, size, and omnipotence of these fledgling corporate actors.

However, prior to the industrial revolution in America the aforementioned lack of inclusion of legislation to deal with corporations in the United States Constitution played an equally crucial role in the emergence of the massive modern American corporate actors. Specifically, the founders of the Constitution were operating in an economic environment where agriculture was king and the less than fifty corporations that had been chartered prior to 1776 were seen to play only a “minor role” in the massively agrarian American economy (Nader, Green & Seligman, 1976, p. 33). Moreover, the drafters of the Constitution were keenly aware of the threat of an overly powerful central government reticent of King George III’s tyrannical reign. Thus, devoid of a Constitutional mandate for the Federal government’s intervention, the power of incorporation was left to the states.

The gradual transformation of our agrarian society to one dependent on manufacture and transportation soon sparked the emergence of powerful, unfettered corporations. The widespread devastation to national commerce during the American Civil War hastened the developments begun by the industrial revolution. Specifically, antebellum lawmakers had neither the governmental capability nor the financing to accomplish much needed internal improvements to the states’ commerce systems (Horowitz, 1977). This led to fierce interstate competition for increased incorporation that would aid state governments in modernizing their infrastructures. The net result was a 500% explosion in the number of corporations in the United States from 1917 to 1969 (J. S. Coleman, 1982). The major problem with the incorporation power being in the

hands of the states lies in the fact that competing states manipulate their charter requirements and legal systems to make restrictions on corporations as minimal as possible in order to attract the most firms to their domain. For example, perhaps the most successful of all states in this regard is Delaware, which due to the State's well advertised "hands off" attitude to corporate operations, could boast incorporation of 40% of the largest corporations listed on the New York Stock Exchange in 1977 (Baldwin, 1985). The debilitating conflict of interest in a system such as this should be clear to all. How can an elected public government effectively serve as a capable guardian to both its natural persons and corporate actors when it has all but abdicated its ability to do so for the latter? Thus, while corporate actors in modern society now have the same ability to engage in illegal behaviors they are not subject to nearly the same amount of legislation aimed at the behaviors of natural persons. Indeed, modern corporate actors' actions are not only less limited by legislation than are natural persons, but because they are more organized they also have the ability to use the court systems defend the status quo. As Stone (1975) points out, "aside from governments and governmental agencies, more and more it is corporations that are effectively the actors in our society" (pp. xi-xii).

### **Criminology and the Study of Corporate Actors**

Like the proverbial "genie's bottle," the rush to incorporate most business ventures and manipulate the legal system in favor of these corporations over the course of this century and the last half of the previous one started the process that has resulted in the nearly irreversible "corporatization" of American society. Today, corporate actors dwarf natural persons in activity, size, power and, some would argue, even value in the

eyes of federal, state, and local governments. For anyone who questions the validity of this last assertion, consider the fact that states vie for placement of corporations within their borders via promises of land, tax relief, and limited liability, yet when was the last time anyone heard of a state competing for a specific citizen to move there? The sad result of this zeal to promote economic growth through corporate growth and the prejudicial manipulation of the legal system is the current reality that there is an unofficial "blind eye" turned towards the delinquent behavior of corporate actors. In this regard, the legal system and the field of criminology remain doggedly focused on the digressions of natural persons, ignoring not the often cited "dark figure" of crime but the relatively unexplored and much more ominous "white figure of crime" that is corporate deviance. Coupled with the deplorably little attention the national media pays towards anything but the most heinous and blatant of corporate crimes, it is little wonder that most average Americans fail to equate corporate deviance with actual criminality. This sad fact is exemplified when one considers the 1985 National Survey of Crime Severity, which asked respondents to give a severity rating to a wide range of specified crimes with higher numbers indicating a perceived higher level of seriousness. Remarkably, this survey found that respondents on average gave a 72.1 severity rating to a situation where a natural person plants a bomb in a public building killing 20 people and only a 39.1 rating to a situation where a corporation knowingly dumps waste into the public water system killing 20 people (Wolfgang, Figlio, Tracy & Singer, 1985). In both these situations, a conscious decision was made to engage in deviant activity with the knowledge that death was a likely outcome of those actions. However, one could assert with almost absolute certainty that the natural person in the first example can expect

lifetime incarceration or death if apprehended while the corporate actor would most likely face little more than sanctions and civil remedies. Moreover, ask any average citizen to distinguish corporate crime from street crime and one is likely to receive a myriad of puzzled faces and variable answers.

With few exceptions, the field of criminology is neither immune from the general public's lack of perceived severity attached to corporate crime nor their inability to specifically define what constitutes corporate crime. Though there have been a myriad of mutually exclusive theoretical attempts to explain white collar crime, Coleman (1992) provides a useful typology that divides all these efforts into the aforementioned three general theoretical perspectives. The first and earliest of these three general theoretical frameworks exemplifies how infantile the study of corporate criminality actually is when compared with the overall history of criminological study. For not until Sutherland's landmark address to the American Sociological Society in 1939 was corporate crime even seriously considered as an appropriate pursuit for the field of criminology. However, even within this watershed event in the study of corporate deviance could be found the seeds of lasting confusion and its byproduct avoidance. Specifically, out of want for a better title Sutherland simply chose the title "white collar crime" to represent the vast gamut of possible offenses, both on an individual level and corporate level, that do not fit within standardized concepts of "street crimes."

Theoretically, Sutherland and his students applied his differential association theory as a micro oriented theoretical framework for understanding white collar crime as individually learned deviancy in the same manner as any other type of delinquency. Moreover, Sutherland credited industrialization and the progresses of capitalism with

decreasing the strength of traditional social institutions to maintain social order (J. W. Coleman as cited in Schlegel and Weisburd; 1992). The resulting social disorganization created a breeding ground for deviant behavior, including white collar crime, that was then passed on from individual to individual via their close interactions with each other. Though no one can dispute the value of Sutherland's work to the study of white collar crime in general, his specific application of differential association as a "stand alone" micro oriented explanation for corporate crime is not as valuable. Specifically, the theory fails to explain why some people internalize and act upon definitions favorable to law violations transmitted from others, while some do not. More importantly, even Sutherland's co-author and student Donald Cressey, who added the concept of learned rationalizations as crucial to the acceptance of deviant definitions, agreed that showing how crime is the result of learned definitions favorable towards deviance cannot be empirically tested in either an individualistic white collar crime setting or the vast arena of corporate crime (Vold, 1998).

Criminological theories focusing on the causes of corporate deviance from a macro oriented social structure perspective also fall short of providing an adequate explanation for the phenomenon of corporate deviance. This theoretical perspective, as discussed by Coleman (1992), expands upon Sutherland's concept of social disorganization as a byproduct of industrialization. Moreover, this perspective argues that the Western cultural values of competition for the "American dream" of individual wealth as a gauge of success represents a cause for white collar and corporate deviance. Put simply, this theoretical perspective holds the capitalist system embraced by Western cultures responsible for promoting criminogenic values that foster white collar

(individual natural person offenders) and corporate (actions taken on behalf of a corporate actor) crime as legitimate avenues for obtaining wealth at any cost. However, as Coleman astutely points out, for this theoretical perspective to hold true one would expect to find little, if any white collar crime and corporate crime in non capitalist countries. This clearly is not the case. However, one could make an argument that the criminogenic tendencies are inherent not in capitalism, but in industrialization; a modern reality held in both capitalist and non-capitalist nations (J.W. Coleman as cited in Schlegel and Weisburd, 1992). One extremely valuable aspect of the social structural theoretical explanation for our present discussion of corporate crime is the assertion that these types of crime are so rampant because of a widespread lack of law enforcement against these types of offenses. In this regard, Coleman points out that not only are white collar and corporate offenders seldom detected and punished, but also the laws the government enacts to curb corporate crime are nothing more than "symbolic politics" designed to placate a clamoring public with little threat of actually alienating the powerful corporate actors (J. W. Coleman as cited in Schlegel & Weisburd, 1992, p. 64). Thus, a social structural explanation of corporate crime does exhibit utility to the criminological community in that it focuses on the lack of capable guardians as a cause of corporate crime. Unfortunately, however, it affords no possible empirical embarkation point from which to deal with the problem. Specifically, from this perspective the only way to alleviate the problem of corporate deviance would be to abandon both capitalism and industrialization. Moreover, as the reader will ascertain in the following pages, a lack of capable guardians alone cannot account for the proliferation of corporate crime.

Lastly, Coleman (1992) describes recent theoretical attempts to come to grips with corporate criminality via organizational theories dealing with corporate cultures as responsible for the existence and proliferation of corporate deviance. The focus of this theoretical perspective is perhaps best summarized by Stone (1975) when he says, "it must be kept in mind that the corporation (and the business world) is just that: a community, it has its own attitudes, norms, customs, habits and mores.....even in enforcing present anticorporate measures, the law often runs into a widely held business view that the conduct it forbids is not morally reprehensible, that it is the laws themselves that appear bad" (p. 228). Not only does this perspective argue that the internal values and norms of a corporation can socialize its employees to accept and engage in deviance on behalf of the corporation, but also that there are external organizational contexts that play a role in the existence of corporate deviance. Specifically, Coleman (1992) argues that the external legal constraints placed on a corporation and the economic structure of the industry in which the corporation is engaged play equally important roles in determining the internal socialization climate of the corporation.

Concerning the legal environment, Coleman (1992) argues that the power of a corporation will determine whether or not the corporation is able to exert legislative influence and in essence, "decriminalize" their behaviors through the repeal or failure to pass certain pro or anti corporation legislation. Clearly, corporations wield immense power and influence and usually, unless there is a massive public outcry against a specific deviant corporate action, are able to stymie efforts by weaker collections of natural persons seeking to increase legal restraints. Thus, this theoretical perspective highlights the fact that current government regulatory practices aimed at curbing

corporate deviance will have little effect without a general public interest in having these activities curtailed.

Regarding the external factor of economic organization, Coleman (1992) argues that industries with relatively few major corporate actors involved are more conducive to corporate deviance. Moreover, the work of Sutherland (1949), Clinard and Yeager (1980) and Cressey (1976) seem to suggest that corporate deviance is an infectious social malady. In this regard, other corporate actors tend to competitively or collaboratively mimic an intra-industry rival's corporate deviance if it is seen that the originally deviant corporation is profiting from such actions. Clearly, organizational theories concerning corporate deviance provide a valuable vantage point for ascertaining the role corporate actors play in motivating both employees and other corporate actors to engage in corporate deviance for the benefit of the corporation. Although promising for this reason, Coleman (1992) argues that this perspective lacks a clear focus for addressing the complex problem of corporate criminality.

Obviously all three of these theoretical perspectives provide some useful hypotheses for explaining various aspects of corporate deviance. However, no one of them alone would enable a researcher to conduct an empirical study concerning the causes of corporate deviance that would not be flawed by spuriousness from the onset. Of these three perspectives, one focuses on the individualistic causes of white collar criminality, the second on the societal values that promote a criminogenic environment conducive to corporate deviance and the last focuses on both the internal and external organizational factors facilitating a culture of corporate deviance. The solution to the inherent problems within each of these frameworks is to adopt not a mutually exclusive



view of one being more applicable than the other, but rather to embrace a holistic framework that allows for the combination of hypotheses dealing with individual levels of corporate deviance, structural causes, and organizational causes within corporate actors themselves. To this end, Cohen and Felson's (1979) routine activity theory presents a viable synthesized theoretical basis from which to examine and possibly explain the existence and proliferation of corporate crime.

### **Reworking Routine Activity Theory to Fit the Phenomenon of Corporate Crime**

Prior to explaining how Cohen and Felson's routine activity theory represents a synthesis of previously divergent theories aimed at explaining corporate crime, one must first have a basic understanding of the major elements of the theory. Most important to this understanding is the realization that until now, like most criminological theories, Cohen and Felson's routine activity theory has been exclusively focused on explaining the criminality of natural persons. Keeping this in mind, the heretofore solely macro oriented theory de-emphasizes the characteristics of individual offenders focusing instead on the circumstances in which offenders commit what they term "predatory" crimes or violations. The authors define predatory violations as, "illegal acts in which someone definitely and intentionally takes or damages the person or property of another" (Cohen and Felson, 1979, p. 589). The authors argue that, "structural changes in routine activity patterns can influence crime rates by affecting the convergence in space and time of three minimal elements of direct-contact predatory violations: (1) motivated offenders, (2) suitable targets, and (3) the absence of capable guardians against violation" (Cohen and

Felson, 1979, p. 589). In other words, the successful commission of a predatory crime requires a natural person who is motivated to commit a crime, the presence of a person or place constituting a relatively safe target for the offender and the lack of any effective guardian to prevent the violation. Moreover, the authors point out that changes in societal trends, such as changes in the composition of the work force and familial structures, can contribute to the convergence of these three factors resulting in, "some relatively large changes in crime rate trends" (Cohen and Felson, 1979, p. 604). The authors apply these aspects of routine activity theory as an explanation for certain violent and property crime trends.

In order to apply routine activity theory to the phenomenon of corporate crime, some reworking of these basic proposals must be accomplished. First, although the issue of whether or not corporate crimes can constitute violent offenses is often ignorantly debated by some, it is undeniable that corporate crimes are clearly aimed at the monetary benefit of the offending corporation and therefore constitute what Cohen and Felson meant by property crimes. Thus, routine activity theory can be applied to corporate crime as an explanation for trends in this area.

Second the definition of what constitutes a "motivated offender" must be clarified. According to Cohen and Felson (1979), a motivated offender is simply one who has both criminal inclinations and the ability to carry out those inclinations. Corporations as legal actors can have criminal inclinations in the same manner as natural persons and certainly have demonstrated the keen ability to carry out those inclinations via the production of faulty products at cheaper costs, toxic dumping to avoid costly regulations, price fixing, contract fraud, and a myriad of other vehicles that fall under the

heading of corporate deviance. For example, in the 1950s and early 1960s, the General Electric Corporation and Westinghouse Electric Corporation conspired to fix prices in contractual dealings with the Tennessee Valley Authority resulting in millions of dollars in illegal profits for the conspirators (Ermann and Lundman, 1996). Moreover the motivated offender could also be the natural person employed by a large corporation who is motivated to embezzle money from the corporation and has the ability to do so, for example, by deducting a small amount of money from each transaction to which they have access. However, although routine activity theory is equally applicable to the phenomenon of individualistic white collar crimes, the present discussion focuses instead on the criminality of corporate actors, which carries much more potential for societal impact.

Third, there is an endless smorgasbord of suitable targets for motivated corporate actors with both the inclination and ability to pursue these targets for illicit gains on a scale incomparable to any potential victims at risk for the index offenses in the FBI's Uniform Crime Report (UCR). Conklin (1977) identifies just some of the potential suitable targets for white collar and corporate crime when he states that, "most business crimes involve an obvious victim: a defrauded stock-holder, a deceived customer, or a company which has lost money through employee theft" (p.4). However, historically the major victim of corporate crime has been the federal government and thus, indirectly the American people themselves. The habitual tendency of defense contractors to intentionally gouge the federal government in routine contractual dealings is legendary and widely documented. For example, the Economic and Environmental Crimes Division of the Air Force Office of Special Investigations (AFOSI) recently highlighted a

review of military contracts that included the purchase of screws worth \$ .57 a piece for \$76 per screw, seals worth \$59 individually for \$251, and a bell worth \$47 for \$714 (HQAFOSI, XOGB, 2000)! In a subsequent section this aspect of corporate deviance will be explored as a potential avenue for the empirical test of routine activity theory as applied to the phenomenon of corporate crime. For now, the reader should clearly see that there exists a plethora of suitable targets, the most suitable of which is the federal government for the motivated corporation to exploit.

Fourth, the principle of the absence of capable guardians is more applicable to the arena of corporate crime than to explanations of crime trends for natural persons. In this regard, formal attempts by state and federal regulatory agencies to control corporate deviance are ineffective at best. Because of the aforementioned legal concessions granted to corporations, replaceable natural persons acting on behalf of corporate actors are usually shielded from individual culpability in court so that neither the corporation nor its agents are frequently indicted in criminal court. Thus, the capable guardians, which Cohen and Felson identify in their work as police officers and to a lesser degree individual citizens, can be expanded in the realm of corporate crime to include the law itself.

In this regard, as Swigert and Farrell (1981) point out, one must understand that the parameters of the law are both statutory and culturally implicit. Specifically, they argue that while, "there are no statutory exemptions from criminal responsibility accorded those whose damages to human life occur within the context of the manufacture and sale of consumables...rather, they (corporate actors) have enjoyed a de facto exemption which has become institutionalized in the law" (p. 163). In other words, due

to the loose regulatory structure that fostered the development of modern corporate actors there is a general *laissez faire* attitude concerning the standardized application of regulatory laws against corporations even when the actions of those corporations clearly fall within the jurisdiction of *apropos* statutes. As an example Swigert and Farrell (1981) compare a fatal argument between two drunken friends with corporate culpability in actions resulting in the deaths of individuals. "Fatal bodily harm, however, may just as easily be a product of dangerous factory conditions, polluted air, or unsafe motor vehicles as it is of bullet wounds, knifings, or beatings" (Swigert and Farrell, 1981, p. 163). Moreover, As Conklin (1977) argues, even when corporate actors are indicted in criminal court for regulatory violations, "business offenses rarely elicit harsh sanctions from the criminal justices system, although violations are defined as crimes and may be punished in the same way as traditional crimes" (p. 100).

In addition to the loose application of regulatory law to corporate actors, the culturally implicit nature of the law referred to by Swigert and Farrell (1981) deals with the aforementioned lack of a widespread public connection between corporate deviance and actual law violations. Although many would argue that this public paradigm is less a reality today than it was in Sutherland's day, the cold hard truth remains that only the most heinous and publicly celebrated cases of corporate deviance ever reach a criminal courtroom. For example, in 1978 there was widespread attention to the grand jury indictment of the Ford Motor Company on three counts of reckless homicide and one count of criminal recklessness in the deaths of three Indiana teenagers. The decision to indict was based on evidence that over an eight year period the Ford Motor Company made the informed decision to continue selling the Ford Pinto despite the fact its fatally

flawed gas tank was resulting in serious injury and death in low impact collisions. Regardless of the overwhelming evidence that the company refused to recall the cars because the cost of the recall would exceed the estimated payments to the families of the dead and injured, the Indiana court's landmark attempt to regulate corporate actors ended in an acquittal. Although this effort by the State of Indiana can be seen as a valiant attempt to bring legal culpability to these major actors in our society, we must conclude that some 22 years later there are still no capable guardians able to effectively and consistently regulate and thereby deter corporate criminality. As Vaughan (1998) points out, even today, "managers will violate the law to attain desired organizational goals unless the anticipated legal penalties (the expected costs weighed against the probability of delaying or avoiding them) exceed additional benefits the firm could gain by violation" (p. 23).

Finally, routine activity theory's assertion that structural changes in routine activities in society allow the convergence of the aforementioned three elements conducive to predatory violations is particularly applicable to corporate crime. Few would argue that perhaps the greatest structural changes in the routine activities of the American work force, familial structure, and society in general came about as a result of the industrialization and corporatization of American life. In essence, this cultural change in the 18<sup>th</sup> and 19<sup>th</sup> centuries sounded the final death knell for the agrarian dominance of American society and led to the emergence of socially dominant corporate actors. Not only are corporations capable of being motivated offenders with a plethora of suitable targets and a lack of capable guardians against potential violations, but the organizational context of corporations that has radically changed American society serves

to formally combine these three elements in a stable and continued manner. In other words, whereas the combination of these three minimal elements fluctuates in the realm of “street crimes” depending on the routine activities of police and or natural persons, the permanence and stability of a corporation allows these three elements to coexist as long as the corporation remains viable and has an institutionalized proclivity for deviance. Therefore, routine activity theory may not only be useful in the explanation of corporate crime, but it may actually be more applicable to this area of deviancy than it is to the delinquent behavior of natural persons.

### **Routine Activities Theory: a Synthesized Criminological Framework for Explaining Corporate Crime**

The true utility of routine activity theory to the realm of corporate deviance becomes apparent when the reader realizes that these reworked major propositions of the theory represent a fusion of heretofore mutually exclusive theoretical paradigms aimed at this criminological phenomenon. Thus, routine activity theory represents a synthesized solution to the current problem of scattered and holistically inadequate criminological paradigms dealing with corporate deviance. Coleman (1992) admonishes us that the current status of criminological theory dealing with white collar and corporate crime is, “a salad bar of bits and pieces from which researchers build their own theories that is likely to leave us without a clear, coherent focus” (p. 71). He goes on to argue that the solution to this problem, which fits into his typology of the three major existing theoretical paradigms concerning corporate crime, is the development of a, “theoretical framework for an understanding of white-collar crime on the individual, organizational,

and societal levels” (J. W. Coleman as cited in Schlegel and Weisburd, 1992,, p. 71).

Routine activity theory clearly represents a viable three-pronged theoretical framework for addressing all of these aspects of corporate deviance.

Most notably, routine activity theory has the ability to integrate the seemingly mutually exclusive theoretical perspectives of macro oriented organizational explanations of corporate crime with micro oriented theories of individual motivation through its key element of motivated offenders. In this regard, motivated offenders represent one of the three minimal elements that must come together in order for criminal acts to occur.

Admittedly, Cohen and Felson (1979) focus more on the availability of suitable targets and lack of capable guardians elements in their work and are not as concerned with the theory behind how the motivated offender came to be as they are with their simple presence. However, this does not mean that a routine activity theory framework for understanding either standard UCR offenses or corporate deviance cannot include theories aimed at explaining the motivation of individual offenders. Indeed, as Cohen and Felson (1979) point out, “without denying the importance of factors motivating offenders to engage in crime, we have focused specific attention upon violations themselves and the prerequisites for their occurrence. However, the routine activity approach might in the future be applied to the analysis of offenders and their inclinations as well” (p. 605). By combining here the suggestions of Coleman (1992) with the modified framework of routine activity theory, we can see the true flexibility and utility of the theory. By operationalizing the definition of a motivated offender as simply one who has both criminal inclinations and the ability to carry out those inclinations, routine activity theory presents a multifaceted theoretical framework for incorporating multiple



theories of individual criminal motivation. Specifically, the concept of motivated offenders in routine activity theory can incorporate both the organizational socialization theoretical explanations for the motivation behind individuals engaging in delinquency on behalf of a corporation due the socialization they experienced as well as the more traditional learned behavior theories. In regards to learned behavior, the authors clearly indicate the ability to mesh social learning and social control theorists' work within a routine activity framework when they say, "the structure of primary group activity may affect the likelihood that cultural transmission or social control of criminal inclinations will occur, while the structure of the community may affect the tempo of criminogenic peer group activity" (Cohen and Felson, 1979, p. 605).

The inclusion of social control theories in the above quote clearly indicates the fusion of social structural theories concerning crime causation within a routine activity framework as intended by the authors. This fusion also extends into an application of the theory to corporate deviance as well. In this regard, the discussion of the formation of corporate actors within our society clearly indicates how vast increases in the numbers and size of corporate actors without the accompanying development, albeit intentionally retarded, of a federal institutional system of control has resulted in widespread opportunity for corporate criminal activity. As Cohen and Felson (1979) point out, "substantial increases in the opportunity to carry out predatory violations may have undermined society's mechanisms for social control" (p. 605). Ironically, this means that the decision of lawmakers more than a century ago to encourage unfettered economic growth had an unforeseen side effect of producing equally unfettered corporate deviance. Thus, an application of routine activity theory to corporate deviance includes the body of

work dealing with major structural changes in society resulting in societal institutions', primarily the federal government, inability to control the behavior of behemoth corporate actors.

Both the suitable targets and lack of capable guardians elements of routine activity theory can be clearly seen in this last assertion. Because the deviance of corporate actors often involves multiple states or the federal government itself, the job of acting as guardian or regulator over corporate actors is Constitutionally enumerated to the federal government. However, the well documented and continuing impotence of the federal government to curb corporate deviance represents the lack of capable guardians in routine activity theory as applied to corporate crime. Moreover, the inability of the government to serve as a capable guardian ensures that both the government and the individual citizens it fails to protect from corporate actors remain extremely lucrative and ever present suitable targets for corporate deviance. Thus, for the present discussion the assertion that the convergence of the three minimal elements of routine activity theory as a prerequisite for predatory offenses can be taken at face validity to be an extremely well suited and synthesized explanation for both the existence and proliferation of corporate crime in American society.

### **Some Empirical Support for Routine Activity Theory**

Unfortunately, despite routine activity theory's valuable flexibility and obvious applicability to corporate crime, the theory has yet to be tested empirically in this practically neglected and routinely disjointed area of criminology. Despite this fact, studies have been conducted confirming the empirical validity of routine activity theory's

application to crime trends involving natural persons. A brief examination of the conclusions of some of these studies can be used to show the already proven relevancy of the basic propositions of routine activity theory. Moreover, one can reasonably extend these studies' findings to the corporate crime arena to see how these studies findings' provide some useful insights for researchers interested in the future application of the theory to the area of corporate crime. Following this discussion a proposed empirical test of the theory in a specific vein of corporate crime will offer avenues for a more direct test of the relevancy of the theory as applied to corporate crime.

Perhaps the most methodologically sound examination of routine activity theory is Bennett's (1991) multinational empirical test of routine activity theory. Bennett explores the validity and reliability of the aforementioned macro oriented social structural applicability of the theory by examining crime rate data of 52 nations from 1960 to 1984. The study finds multinational support for the application of routine activity theory to the explanation of street crime with two important considerations: (1) that routine activity theory better explains property crimes than violent crime, and (2) routine activity theory is better applied to highly industrialized societies with high levels of inequality. In addition to the obvious benefit of finding empirical support for the utilization of routine activity theory, Bennett's first consideration lends credibility to an application of the theory to the predominantly property crime oriented corporate crime arena. Further, it is precisely because of the evolution of corporate actors in America that this nation has a highly industrialized society with high levels of inequality caused by the asymmetrical relationship between corporate actors and natural persons. Therefore, Bennett's study

can be taken as empirical support for the application of routine activity theory to corporate crime.

Another study of the empirical validity of routine activity theory is Stahura and Sloan's (1988) test of the theory within an urban stratification context. Specifically, the authors examine demographic variables affecting the existence and proliferation of motivated offenders among city and suburban populations. These demographic variables include the percentages of African Americans, percentage unemployed, percentage of those below the poverty line, and percentage young within these populations as a way of predicting levels of motivated offenders. The study also operationalizes opportunity, or suitable targets, as the number of multiple housing structures, retail/wholesale stores, and service and manufacturing establishments. The study finds empirical support for routine activity theory with the exception that police guardianship had an unexpected positive effect on crime rates, while percentage of females in the labor force did not serve as an effective predictor of crime levels. It is interesting to note that a similar study conducted on the application of routine activity theory to corporate crime would require "mirror image" individual motivation demographic criterion that would most likely also deduce empirical support for the theory. In this regard, one would expect the demographic variables of percentages of whites, middle class status, employed within a corporation and older ages as predicative factors for the existence and proliferation of corporate offenders within the study population. The same relationship between the police as guardians and the levels of crime would be realized in a study of this nature considering the police are rarely involved in the enforcement of laws aimed at deterring corporate offenses.

A third study dealing with the empirical validity of routine activity theory with some applications to the use of the theory in explaining corporate deviance is Miethe, Stafford, and Long's (1987) test of the relationship between social differentiation and routine activities/lifestyle theories. The study focuses on the nature and quantity of routine activities outside the home for over 100,000 American households hypothesizing that changes in the opportunity structure and activity patterns of these households are responsible for increased opportunities for crime and decreased guardianship. Operationalized variables for this hypothesis include increases in out of home travel, numbers of single person households, percentage of women in the labor force, and rates of college attendance. The study finds support for the application of routine activity theory to property crimes, but a weaker correlation for its application to violent crimes. Here again is support for the application of the theory to the property crime preponderance in corporate crime.

### **A Research Proposal for Routine Activity Theory as Applied to Corporate Crime**

The preceding discussion of empirical studies concerning routine activity theory clearly reinforces the previous assertion that the theory represents a synthesis of previously discordant criminological efforts to explain corporate deviance. The true flexibility of the theory is exemplified by these three empirical tests in that each one focused primarily on a different element of the theory as central to their hypotheses. Bennett's (1991) study shows how a study utilizing the theory can incorporate social structural hypotheses, Stahura and Sloan's (1988) work operationalizes the key elements

of motivated offenders and suitable targets, and Miethe, Stafford and Long's (1987) efforts highlight a study centered on routine activities as a cause for increased suitable targets and decreased capable guardians. These studies' findings allow one to make some common sense assumptions about how the results might be applied to the arena of corporate crime. However, as the old saying "the proof is in the pudding" admonishes one cannot state with assurance that routine activity theory adequately addresses the issue of corporate crime until initial and follow up empirical tests of the theory in this area are attempted by the criminological community.

With this in mind, the author will here propose an exploratory multiple time series experimental design that will hopefully "jump start" research interest in this underutilized theoretical framework. Before describing this proposal, two major cautionary notations must be made. First, any study attempting to get at causation in relation to corporate crime must understand that there is certainly, at least from a governmental perspective, a general sense of not wanting to "rock the boat." Indeed, as Coleman (1992) points out there has been a historical, "unwillingness of government agencies to fund research likely to produce conclusions that are threatening to powerful corporate interests" (J. W. Coleman as cited in Schlegel and Weisburd, 1992, p. 58). Although this situation has eased somewhat since the 1970s, there is clearly not as much public and political interest in highlighting and curtailing the proliferation of corporate crime as there is in the great white elephants of criminality such as the "war on crime" and "crime in the streets." Moreover, one could easily equate any hopes of getting cooperation from corporate actors via access to documents and self reporting with the hope that world peace might be achieved this year. Thus, the only viable source for prior offense history records must

come from the abysmally scanty government records on corporate offending. This leads into the second major limitation in this area of research, namely the deplorable lack of any collective national data concerning corporate criminality. Devoid of the UCR, which carries its own internal limitations, researchers must be allowed access to governmental records maintained by the varying and sometimes duplicative federal enforcement agencies charged with enforcing the many manifestations of corporate deviancy.

With these two seemingly insurmountable limitations thus espoused, the criminological community must not shy away from this daunting task. Indeed, like in no other area of criminology there is the opportunity to start with a “clean slate” and use exploratory studies to eventually form a truly accurate national system for monitoring corporate deviance. At the present time, however, researchers must begin this task by conducting relatively small-scale, idiographic in nature research projects to get a handle on the scope of the problem. Routine activity theory provides the most promising theoretical framework for embarking on this Herculean endeavor.

With this in mind, a multiple time series research design focused on intentional corporate overpricing of items on United States Department of Defense (DoD) contracts represents a good starting point for testing the empirical validity of routine activity theory to corporate deviance. This design would involve the matched selection of three corporations that have a primary role in providing material goods to the United States Air Force (USAF), a DoD agency. Two of these corporations would serve as control samples while the third would be the experimental sample. Part of the matching process in selecting these corporations would seek to find three corporations with comparative histories of overpricing in USAF procurement contracts. This would allow the researcher

to hold constant routine activity theory's prerequisite requirement of motivated offenders. Moreover, the fact that the contracts that were the target of previous overpricing are still open and still being fulfilled by the same three corporations would serve to hold constant the second prerequisite variable of a suitable target for these motivated corporate actors. Thus, the experimental intervention would be a policy implementation within the AFOSI, the agency charged with enforcing violations of contract law and procedure, aimed at increasing the variable of capable guardians. In practice this policy would be the stipulation that agents of the AFOSI would review all product receipt documentation from the experimental corporation and immediately enforce, through established fiduciary sanctions contained in the body of the DoD's contract laws, any pricing violations. The law enforcement records system of AFOSI would be used to determine the offense rates for three observation years prior to the implementation of this policy intervention at a specified date. Moreover, this records system would be used to monitor the offense rates of the corporations for at least three years after the intervention date. The scientific hypothesis for this experiment would state that an increase in the capable guardians element of routine activity theory would prevent the full convergence of the minimal elements for predatory violations and result in a statistically significant decrease in the number of violations for the experimental corporation as compared to the controls. This experimental design is premised on Cohen and Felson's central argument that policies aimed at preventing the convergence in time and space of any one of the three minimal elements for predatory violations would be, "sufficient to prevent the successful completion of a direct contact predatory offense" (1979, p. 589). The researcher could



thus expect any differences between the control and experimental corporations to be empirical support for the application of routine activity theory to corporate crime.

Obviously this basic experimental proposal would require a significant amount of additional operationalization and fine-tuning to reduce sources of spuriousness and increase the generalizability of the findings. However, the basic design and objectives present a viable starting point for the application of routine activity theory to this very specific element of corporate crime.

## **Conclusions**

There is no need for the criminological community to further debate whether or not corporate actors constitute entities capable of deviance in the same way as natural persons. The misguided manipulation of the legal system has already served to establish this fact in the codified definition of corporate actors as legal persons with the unique characteristic of limited liability. One need only look at the work of Sutherland or accomplish a similar study of modern corporate actors' "track records" since 1938 to come to the conclusion that corporate actors do indeed "exist" for all intents and purposes in the study of criminology and are clearly capable of socially damaging deviance. Thus, the challenge for the field of criminology remains to ameliorate the entirely too lopsided amount of effort aimed at explaining the deviance of natural persons and utilize a synthesized theoretical framework to both highlight and explain the existence and proliferation of corporate crime. Routine activity theory is a synthesized theoretical tool that allows for the flexible utilization of micro and macro focused theories on individual offenders, social structural theories, and organizational theories to explain the complex

causes of corporate deviance. By utilizing routine activity theory to explain and provide potential policies for dealing with corporate crime, the field of criminology will be able to begin "balancing the scales" in terms of the power, lack of accountability, and misplaced overvalue given to these corporate "overmen." Until this is accomplished, we can neither claim that our government equally protects all the legal entities encompassing our society, nor that lady justice is blind. Indeed, until criminology starts to shed some light on the white figure of crime, one could imagine the blindfold worn by that famous image of lady justice being little more than a visor bearing telltale corporate logos.

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